REMARKS

Upon entry of this Amendment, claim 40 is cancelled, without prejudice or disclaimer, leaving pending claims 29-39 and 41-68. Claims 29-39 stand rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-11, respectively, of U.S. Patent No. 6,735,525 (hereinafter the "'525 patent"). Claims 40-68 stand rejected under the judicially created doctrine of double patenting over claims 12-22 (respectively against each group of claims 41-51 and 52-62 of the instant application) and claims 23-28 (respectively against the group of claims 63-68 of the instant application) of the '525 patent. Claim 40 is objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. The claims, as amended, traverse the Examiner's objection. No new matter is submitted.

Rejection Under 35 U.S.C. §101

Applicant respectfully disagrees with the Examiner's rejection of claims 29-39 under 35 U.S.C. § 101 as claiming the same invention as claims 1-11 of the '525 patent. MPEP Section 804 recites:

> In determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? 35 U.S.C. 101 prevents two patents from issuing on the same invention. "Same invention" means identical subject matter. Miller v. Eagle Mfg. Co., 151 U.S. 186 (1984); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).
>
> A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

The Office action states that pending claims 29-39 of the present application remove the limitation, "a step for," recited in claims 1-11 of the '525 patent. Claims 1-11 of the '525 patent, which recite "a step for," may be construed by a court to fall under 35 U.S.C. 112, paragraph 6, however, claims 29-39 of the present application do not recite "a step for" and therefore may not be construed by a court to fall under 35 U.S.C. 112, paragraph 6. As such, claims 29-39 of the

present application may be more broadly construed by a court than claims 1-11 of the '525 patent, meaning that the test stated in the MPEP for statutory double patenting fails. Specifically, a (broader) claim in the application could be literally infringed without literally infringing a (narrower) corresponding claim in the patent.

Thus, applicant respectfully requests the withdrawal of the rejection of claims 29-39 under 35 U.S.C. § 101 as claiming the same invention as claims 1-11 of the '525 patent.

Double Patenting

Applicant files herewith a terminal disclaimer, removing the rejection of claims 40-68 under the judicially created doctrine of double patenting, leaving claims 41-68 in condition for allowance.

Claim Objection under 37 C.F.R. 1.75(c)

In response to the objection of claim 40, applicant hereby cancels claim 40, without prejudice or disclaimer.

CONCLUSION

Reconsideration is respectfully requested. Applicant believes the case is in condition for allowance and respectfully requests withdrawal of the rejections and allowance of the pending claims.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to **Deposit Account No. 19-3878**. Applicant further reserves the right to prosecute broader claims in this application or any related application

The Examiner is invited to telephone the undersigned at the telephone number listed below if it would in any way advance prosecution of this case.

Respectfully submitted,

Date: March 9, 2005

A.J. Moss
Reg. No. 38,567

SQUIRE, SANDERS & DEMPSEY L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4498
(602) 528-4839
308279